

Petition No.: 4012

Premises affected: 15 Robandy Rd

Petitioner: Keefe

Members: Brown (Acting Chair); McDonough (Clerk); Baime, Boness & Bargnesi (Associate Members)

Anderson recused himself from this hearing & left the room. Petitioner is requesting a variance from section 4.0, 4.1.1. &/or 4.1.2 for the continued existence of a screened porch that does not meet the minimum rear yard setback. The property is located in the SRB District and should have a minimum 30' rear setback. Mr. Keefe explained the genesis of the screened porch that originally started as a deck in 1999, which was converted to a deck with canopy and then into a screened porch without building permits. The non-conformity was discovered when they put the house on the market recently. The existing setback is 23', encroaching 7' into the minimum 30'. The house was originally constructed in 1954. An addition was constructed in 1995 for his mother, but not as a separate unit. At the time, there was no opposition. The Inspector of Buildings viewed the property. Mr. Keefe stated that he is willing to remove the structure if necessary. McDonough made a motion to waive the site view & close the public hearing. Baime seconded the motion and the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate. The Board cited the unusually shaped lot as a hardship. McDonough emphasized that the vacant land owned by Phillips Academy at the rear offers some mitigation. Bargnesi made a motion to find that hardship exists related to the shape of the lot and to grant a variance for the continued existence of the porch with the condition that the porch should not be enlarged, modified or otherwise reconstructed in the future and that no other extension into the 30' rear setback be allowed. The Board voted (4-1) (Boness opposed) to grant the variance with conditions. Brown will write the decision.

Petition No.: 4013

Premises affected: 506 South Main St & 15 Gould Rd

Petitioner: South Andover Development

Members: Anderson (Chair); McDonough (Clerk); Brown (Member); Boness & Bargnesi (Associate Members)

Anderson called for the applicant or their representative. No one responded. Brown stated that he spent the evening prior to the last hearing in The Hall, where the meeting/hearings were advertised to take place, to see if any applicants or interested parties were on the 2nd floor for the ZBA hearings. Anderson announced the change in location, which was changed in the Open Meeting Law notice and posted in the library in multiple locations, as well as in all emails of the Zoning Administrative Secretary. Brown stated that no one identified themselves in the advertised location on the 2nd floor for this meeting. Anderson asked Judi Barrett, consultant to the ZBA, to come forward. Anderson gave a background on the application for a comprehensive permit under MGL Ch. 40B for 20 single family homes. The required Project Eligibility Letter (PEL) was not submitted with the application, which is a requirement of filing. Under Ch. 40B, the ZBA has 30-days to open a public hearing. While the applicant offered to grant an extension to the 30-day limit, the Board was unable to find another date on which they could all meet. Ms. Barrett called the applicant's attorney today, but was unable to communicate with them or to get someone else to attend the meeting and represent the application tonight. Ms. Barrett explained the PEL process as the ticket to file a comprehensive permit application. Without the PEL, an application shouldn't be filed, the Board can't grant a 40B because the application is incomplete. Anderson emphasized that the application is incomplete in a significant, jurisdictionally defective, state-required finding. This application was filed on 12/5/12, possibly in an attempt to file prior to the increase in the Town's subsidized housing inventory exceeding the minimum 10% affordable (which occurred on 12/13/12 when the Rolling Green 40B was filed with the Town Clerk). Barrett stated that counsel confirmed that the applicant has not received the PEL. Anderson distributed a draft dismissal decision. He again confirmed with Brown that he was in The Hall, 2nd floor of the library, the advertised location of the hearing, to redirect people to the ZBA meeting in the Activity Room, 1st floor of the library and that there are signs redirecting the public to this location. Brown confirmed. Anderson then proceeded to walk the Board through the draft dismissal including the finding that the application is incomplete in the following manners as outlined in the draft dismissal:

1. It does not meet jurisdictional requirements (especially the P.E.L.)

2. There is no evidence of eligibility
3. Per the terms in the P&S, they do not control the site (the P&S included in the application for the Cavallaro's property expired on 11/30/12 with no evidence that the sale closed or was extended). It is possible that the P.E.L. was not issued because the applicant does not control the site. Doris & John Cavallaro, 498 S. Main St., brother & sister-in-law of Alfred Cavallaro, the seller of 15 Gould Rd., were verbally informed by Alfred that there was no sale or extension of the P&S due to a lack of financing.
4. The Board lacks jurisdiction to hear the case.
5. Therefore a denial of the current application is appropriate.
6. A copy of Andover Apartments at Rolling Green 40B decision certified by the Town Clerk will be attached to the decision for Lafayette Place.
7. The units from Andover Apartments at Rolling Green are counted from 12/13/12.
8. The Town's SHI meets/exceeds 10%.
12. A denial is consistent with State & local needs.

The proposed motion on page 4, to be discussed, states the dismissal is due to failure to submit a complete application & that the State (DHCD) will be notified.

The Board asked for public comments and questions. Several residents had procedural questions, including whether the applicant can file a new, complete application and who is considered an abutter for notification and the 10% SHI threshold. Residents also voiced concern over wetlands (Mr. Cavallaro, 498 S. Main St., showed/submitted Town GIS maps depicting wetlands on the subject property). Board of Selectmen members Kowalski & Vispoli appeared at the meeting. Chair Anderson updated them on the hearing up until their arrival.

Anderson then asked for a motion to deny the applicant's request for an extension or a continuance on the grounds that:

- A. The applicant rushed to file an incomplete, jurisdictionally defective application;
- B. The Town timely notified the applicant, abutters, all interested persons by appropriate notices that there would be a public hearing this evening; this public hearing was required to be held within 30-days of the submission of the application; this public hearing was scheduled to precede an IDR scheduled for this week, taking the time & attention of multiple Town department & department heads to review; and that approximately 20 members of the public, family members of one of the owners of the subject properties, two members of the Board of Selectmen, plus the Board's consultant are all in attendance tonight.

Brown made a motion to deny the requests based on the aforementioned findings & with the following suggestions: the words 'rushed to' be removed from the phrasing.

McDonough seconded the motion and the Board voted (5-0) to deny the request to extend the date to open the public hearing or continue the hearing to a later date.

McDonough made a main motion to make the findings set forth in the draft document, and to take a vote as set forth in numbered paragraphs one and two on page 4, for the reasons set forth therein and with the attachment of the Andover Apartments at Rolling Green 40B decision filed on 12/13/12 as Attachment A and the summary of the Andover Subsidized Housing Inventory as Attachment. Brown seconded the motion & suggested that the motion be structured to allow any non-substantial changes and corrections. Anderson asked that the Board members submit any comments, changes, corrections to be made by close of business on Friday, January 4, 2013. Once the decision is filed, it will be mailed to the applicant and the State. There is a 15-day deadline from the opening of the hearing. The Board voted (5-0) to approve the denial.

McDonough made a motion to close the hearing. Bargnesi seconded the motion & the Board voted (5-0) to close the hearing.

There being no further business of the Board, the meeting was adjourned at 9:30 p.m.